IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CIVIL APPLICATION NO.982 OF 2005
(FOR CONDONATION)
IN
CIVIL APPLICATION NO.820 OF 2005
IN
APPEAL FROM ORDER NO.552 OF 2004

AND WITH

CIVIL APPLICATION NO.820 OF 2005
(FOR RESTORATION)

M/s.Shah Kumarpal Padamsi & Co. Appellants
vs.
Parrys Confectionery Ltd. Respondents

Mr.G.S.Godbole i/b.M/s.Harakchand & Co. for the appellants.

Mr.V.N.Tayade for the respondents.

CORAM : B.H. MARLAPALLE,J.

DATED : 15th September 2005

P.C.

A.O. No.552/2004 came to be dismissed for want of prosecution on 26.7.2004 and, therefore, Civil Application No.820/2005 has been filed restoration of the said appeal, but belatedly. Hence the Civil Application No.982/05 is for condonation of delay.

2. As per the office note, the delay is of 289 days. It has been submitted that the order of dismissal in default came to the knowledge of the learned Advocate when the Appeal came up on 25.4.2005 for hearing on

admission and at that stage, it was noted that the Appeal was already dismissed for non-prosecution. It is further submitted that the Order dated 26.7.2004 was not known to the learned Advocate as the clerk of M/s.Harakchand & Co. was absent on 26.7.2004 and subsequently did not notice the order of dismissal in default.

3. The respondent-company has filed affidavit-in-reply and opposed the application for condonation of delay. It has been submitted, interalia, that even the delay of 42 days from the date of knowledge has also not been explained and, therefore, there is no case made out to condone the delay.

4. It is noted that in the appeal the order under challenge was an order passed under Order 7 Rule 10 of C.P.C. returning the plaint and, therefore, it would be just and proper that the delay is condoned by levying costs.

5. Hence the delay is condoned and the application is allowed, but subject to payment of costs quantified at Rs.2,000/- and to be remitted to the legal services of this Court within a period of two weeks from today.

6. Civil Application No.820/2005 is allowed. The appeal is restored to file.

7. List the Appeal for admission on 10.10.2005.

(B.H. MARLAPALLE,J.)